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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. **2011-45**

A C C U S A T I O N

12 **ROXANNE CAROL HUK**
13 **aka ROXANNE CAROL HAY**
14 **aka ROXANNE CAROL LEWIS**
15 **aka ROXANNE CAROL JERDON**
16 **aka ROXANNE CAROL SCHWANEBECK**
17 **aka ROXANNE CAROL LADD**

P.O. Box 2034
Valley Center, CA 92082

Registered Nurse License No. 535122

Respondent.

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19
20
21 Complainant alleges:

22 **PARTIES**

23 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
24 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
25 of Consumer Affairs.

26 2. On or about August 8, 1997, the Board of Registered Nursing issued Registered
27 Nurse License Number 535122 to Roxanne Carol Huk aka Roxanne Carol Hay aka Roxanne
28 Carol Lewis aka Roxanne Carol Jerdon aka Roxanne Carol Schwanebeck aka Roxanne Carol

1 Ladd (Respondent). The Registered Nurse License was in full force and effect at all times
2 relevant to the charges brought herein and will expire on June 30, 2011, unless renewed.

3 JURISDICTION

4 3. This Accusation is brought before the Board of Registered Nursing (Board),
5 Department of Consumer Affairs, under the authority of the following laws. All section
6 references are to the Business and Professions Code unless otherwise indicated.

7 4. Section 2750 of the Business and Professions Code (Code) provides that the Board
8 may discipline any licensee, including a licensee holding a temporary or an inactive license, for
9 any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

10 5. Section 2764 of the Code provides that the expiration of a license shall not deprive
11 the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to
12 render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the
13 Code, the Board may renew an expired license at any time within eight years after the expiration.

14 STATUTORY PROVISIONS

15 6. Section 482 of the Code states:

16 "Each board under the provisions of this code shall develop criteria to evaluate the
17 rehabilitation of a person when:

18 "(a) Considering the denial of a license by the board under Section 480; or

19 "(b) Considering suspension or revocation of a license under Section 490.

20 "Each board shall take into account all competent evidence of rehabilitation furnished by
21 the applicant or licensee."

22 7. Section 490 of the Code provides that a board may suspend or revoke a license on the
23 ground that the licensee has been convicted of a crime substantially related to the qualifications,
24 functions, or duties of the business or profession for which the license was issued.

25 8. Section 493 of the Code states:

26 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
27 the department pursuant to law to deny an application for a license or to suspend or revoke a
28 license or otherwise take disciplinary action against a person who holds a license, upon the

1 ground that the applicant or the licensee has been convicted of a crime substantially related to the
2 qualifications, functions, and duties of the licensee in question, the record of conviction of the
3 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
4 and the board may inquire into the circumstances surrounding the commission of the crime in
5 order to fix the degree of discipline or to determine if the conviction is substantially related to the
6 qualifications, functions, and duties of the licensee in question.

7 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
8 'registration.'"

9 9. Section 2761 of the Code states:

10 "The board may take disciplinary action against a certified or licensed nurse or deny an
11 application for a certificate or license for any of the following:

12 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

13 ". . . .

14 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
15 functions, and duties of a registered nurse, in which event the record of the conviction shall be
16 conclusive evidence thereof.

17 ". . . ."

18 10. Section 2762 of the Code states:

19 "In addition to other acts constituting unprofessional conduct within the meaning of this
20 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
21 chapter to do any of the following:

22 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
23 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
24 administer to another, any controlled substance as defined in Division 10 (commencing with
25 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
26 defined in Section 4022.

27 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
28 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in

1 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
2 himself or herself, any other person, or the public or to the extent that such use impairs his or her
3 ability to conduct with safety to the public the practice authorized by his or her license.

4 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
5 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
6 or the possession of, or falsification of a record pertaining to, the substances described in
7 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
8 thereof.

9 ". . . ."

10 11. Section 2765 of the Code states:

11 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
12 charge substantially related to the qualifications, functions and duties of a registered nurse is
13 deemed to be a conviction within the meaning of this article. The board may order the license or
14 certificate suspended or revoked, or may decline to issue a license or certificate, when the time
15 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an
16 order granting probation is made suspending the imposition of sentence, irrespective of a
17 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person
18 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict
19 of guilty, or dismissing the accusation, information or indictment."

20 REGULATIONS

21 12. California Code of Regulations, title 16, section 1444, states:

22 "A conviction or act shall be considered to be substantially related to the qualifications,
23 functions or duties of a registered nurse if to a substantial degree it evidences the present or
24 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
25 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

26 "(a) Assaultive or abusive conduct including, but not limited to, those violations listed in
27 subdivision (d) of Penal Code Section 11160.

28 "(b) Failure to comply with any mandatory reporting requirements.

"(c) Theft, dishonesty, fraud, or deceit.

"(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code."

13. California Code of Regulations, title 16, section 1445 provides:

“ . . .

“(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

“(1) Nature and severity of the act(s) or offense(s).

“(2) Total criminal record.

“(3) The time that has elapsed since commission of the act(s) or offense(s).

“(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

“(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

“(6) Evidence, if any, of rehabilitation submitted by the licensee.”

COST RECOVERY

14. Section 125.3 of the Code provides that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(December 9, 2009, Conviction for DUI Causing Injury on October 10, 2009)

15. Respondent is subject to disciplinary action under Code sections 490 and 2761, subdivision (f), on the grounds that she was convicted of a crime that is substantially related to her qualifications, functions and duties as a registered nurse. The circumstances are as follows:

a. On December 9, 2009, in a criminal case entitled *The People of the State of California v. Roxanne Carol Huk*, San Diego Superior Court, North County Division case number CN268359, Respondent was convicted by her plea of guilty to violating Vehicle Code sections

1 23153, subdivision (b), driving under the influence of alcohol with a BAC over .08 percent and
2 causing bodily injury to another person, and 17, subdivision (b)(4), reducing the felony to a
3 misdemeanor.

4 b. The facts that led to this conviction are that on October 10, 2009, a California
5 Highway Patrol (CHP) officer responded to a traffic collision involving two vehicles on Valley
6 Center Road north of Lilac Road in Valley Center, California. Respondent told the CHP officer
7 that she was driving to Pala to visit a friend and turned left onto Valley Center Road from Lilac.
8 The victim driver and his passenger stated that Respondent was driving on the wrong side of the
9 road and was driving towards them fast, so the victim had to move over to avoid being hit head
10 on by Respondent. The victim driver slowed down and tried to get out of the way but Respondent
11 struck him anyway. The victim driver and his passenger were transported to Palomar Medical
12 Center for emergency medical treatment. The CHP officer made contact with Respondent who
13 refused medical attention. The CHP officer observed Respondent with signs of intoxication, such
14 as alcohol odor, bloodshot eyes, and a roller coaster of emotion. The officer performed a DUI
15 evaluation on Respondent who failed the field sobriety tests and was arrested.

16 c. As a result of the conviction, Respondent was sentenced to 5 years of summary
17 probation, ordered to violate no laws, serve 5 days in jail with credit for 1 day served, report to
18 the Vista Detention Facility on consecutive weekends, pay various fines and fees, complete 4
19 days of a public service program one day per week, adhere to Standard Alcohol Conditions per
20 Vehicle Code section 23600, complete a first conviction program, MADD, as directed by the
21 Assessor, not to drive without a valid driver's license and insurance, and pay restitution to the
22 victims.

23 SECOND CAUSE FOR DISCIPLINE

24 (Using Alcohol to a Dangerous Extent)

25 16. Respondent's license is subject to discipline under Code section 2762,
26 subdivision (b), in that Respondent used alcohol to an extent dangerous to herself and others as is
27 set forth in paragraph 15, above, which is incorporated by reference.

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